IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 400 OF 2005

Prabhu Balu Ghayal and ors. ... Appellants (Ori.Plaintiffs)

V/s

Rajaram Dada Dhole and ors. ... Respondents (Ori.Defendants)

Mr. V.B. Tapkir and Ajay Joshi for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 21ST JUNE, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Pandharpur, dismissing the suit of the plaintiffs for possession of the suit property i.e. agricultural lands.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The suit was filed against the defendants for

possession of the property admeasuring 2 Hectors 70 Ares which was previously part and parcel of Survey No. 98. The plaintiffs alleged that the certificates granted in favour of defendant No.1 under Sec. 32-O and 32-M of the B.T. & A.L. Act were illegal and void and were not in accordance with the provisions of the said Act and, therefore, defendants' possession on the basis of such certificates is illegal and hence the possession of the suit property was sought from the defendants.

4. The defendants challenged the suit and defended it on the basis of Certificates under Sec. 32-O and 32-M of the B.T. & A.L. Act. The learned Trial Judge adjudicated the dispute and came to the conclusion that the plaintiffs failed to prove that they were owners of the suit land. It was further held that it was not proved that the certificates under Secs. 32-O and 32-M of the said Act were illegal and not in accordance with the provisions of the Tenancy Act and, as such, the suit came to be dismissed.

The appeal was carried to the Addl. District Judge, Pandharpur, who, after hearing both parties, came to the conclusion that the findings recorded by the learned Trial Judge were legal and proper and, therefore, the

appeal came to be dismissed. Hence the present appeal.

5. At the outset, it may be noted that the suit is filed for possession of the properties simplicitor without seeking any declaration to the effect that the revenue proceedings and consequent issuance of certificates under Secs. 32-O and 32-M of the Act were illegal and void and, therefore, not to be acted upon. Both the Courts below have recorded the concurrent findings that the suit in its present form was not maintainable in law. It was also apparent that there is no declaration sought by the plaintiffs to the effect that the said revenue proceedings of consequent effect were null and void and, therefore, not to be acted upon. The plaintiffs were owner of the property and hence the possession was required to be decreed in their favour.

6. It is also an admitted position that no further remedies were availed as contemplated under the Act to seek setting aside of the revenue proceedings consequent to which the certificates under Sections 32-O and 32-M of the Act were issued. In other words, perusal of the plaint itself shows that the plaintiffs want the Civil Court to ascertain that both the impugned certificates under the Tenancy Act are illegal and void. In order to

support his plea, the learned counsel for the appellants sought to put reliance on the ruling of this Court in the case of **Madhav Kesu Khuspe v/s Sundrabai Mugutrao Phadatare, reported in 1978 Mh.L.J. 289,** the ratio of which is to the effect that merely because a statute bars the jurisdiction of the Civil Court, it does not mean that for all purpose the jurisdiction of the Civil Court is taken away. The power of the Civil Court to examine the cases where the provisions of the Act have not been complied with or the statutory Tribunal has not acted in confirmity with the principles of judicial procedure or natural justice remains unaffected. In my considered view, there cannot be two opinions regarding the ratio laid down in this ruling, however, I am satisfied that this is not the case which would be applicable to the present set of facts. In the present case, the plaintiffs, instead of adopting the remedies available under the B.T. & A.L. Act has come to the Court with the suit only for possession simplicitor with averments that the impugned certificates issued under the said Act are illegal and void without seeking any declaration to that effect. In my considered view, it is not allowed in law. In other words, there is no question of ouster of jurisdiction of Civil Court, however, it is the question whether to exercise the

jurisdiction by the Civil Court under the particular set of facts. In view of this position, I am inclined to hold that both the Courts below have rightly held that the plaintiffs have failed to prove their case of possession over the suit property on the basis of ownership, title and have dismissed the suit on merits. Time and again, it is held by the Apex Court that the concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of the provisions under Sec. 100 of the C.P.C. In the present case, it is seen that both the Courts below have properly appreciated the plaintiffs' evidence on record and have recorded their findings in just, proper and legal manner and, therefore, it would brook no interference.

In the result, the appeal stands dismissed.

(P.V. Kakade, J.)